IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Prabhu Dayal vs. The State Bank of Bikaner & Jaipur & ors.

S.B. Civil Second Appeal No.61/1987 against the judgment and decree dated 11.3.1987 passed by the learned Addl. District Judge No1, Hanumangarh in Civil Appeal No.26/85.

Date of Judgment: March 10, 2006.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. S.L. Jain for the appellant.
Mr. M.D.Purohit,Senior Advocate assisted by Mr. Ghynendra Singh Gehlot for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

The appellant filed the suit for declaration with respect to his date of birth. According to the plaintiff, his date of birth is 18.11.1925, whereas in the service record, his date of birth has been entered as 6.2.1924. The plaintiff received one letter from the Branch Manager of the respondent-Bank in the month of February, 1983 stating therein that since his age of superannuation is coming in the month of February, 1984, therefore, he shall retire in the month of February, 1984. Upon this, plaintiff filed present suit for declaration on 30.1.1984, which

appears to be a month's before the time of his retirement. The respondent-Bank contested the suit and submitted that the plaintiff himself entered his date of birth as 6.2.1924 which continued in the service record in the knowledge of the plaintiff. He completed about 36 years of service without making any objection about wrong recording of his date of birth.

Both the parties led their evidence. The plaintiff produced documentary evidence. The plaintiff produced documentary evidence (Ex.1) which is said to be one copy of the gazette containing the result of the matric examination of the Punjab University wherein according to the plaintiff, his date of birth has been shown as 18.11.1925. He also produced record of the High School, Abohar wherein according to the plaintiff, his date of birth has been recored in the school as 18.11.1925. Ex.3 is also a document issued by the same school and same is the position of Ex.4. The trial court found that in all these documents produced by the plaintiff, the plaintiff failed to establish any relation with the plaintiff. The alleged copy of the gazette was found to be incomplete and further in the record of the school, there was entry in the name of Prabhu Dayal at two places, one having date of birth as 5.9.1925 and another having date of birth as 18.11.1925. The plaintiff failed to prove which of the entry is related to the plaintiff. The plaintiff also failed to produce any certificate obtained from the

Education Board. In totality of the circumstances, the trial court held that these documents are not coming from proper custody as well as they cannot be relied upon because of the fact that sufficient particulars are not mentioned in the documents itself so as to connect these documents with the plaintiff. The trial court dismissed the suit of the plaintiff by judgment and decree dated 21.8.1985. The appeal was also dismissed by the first appellate court by impugned judgment and decree dated 11.3.1987. Hence this second appeal.

The appeal was admitted without framing substantial question of law on 27.7.1988 but on 13.2.2002 following two substantial questions of law were framed:-

> *"1. Whether the findings in respect of documents Ex.1, Ex.2 and Ex.3 which have been held not to be proved by the court below when they were more than 30 years old, are vitiated ?*
>
> *2. Whether in case even it is held that document Ex.2 should have been held to be proved, what would be its effect on the correctness of the date of birth ?"*

According to the learned counsel for the appellant, the appellant has also submitted an application under Order 41 Rule 27, C.P.C, before this Court and he is seeking permission to produce matriculation certificate of the Punjab University wherein the plaintiff's and plaintiff's father name are given and in that certificate, the date of birth of the plaintiff has been clearly mention as 18.11.1925.

Shri M.D. Purohit, Senior Advocate assisted by Shri Gyanendra Singh Gehlot, appearing for the respondents vehemently submitted that the plaintiff, who was in service of the bank himself narrated his date of birth as 6.2.1924. He remained in service till January, 1984 without raising any objection about wrong entry of his date of birth. It is submitted that it is impossible that he would not have known this fact, as during this period, he must have looked into his seniority list etc. The plaintiff did not raise grievance till he received his letter of retirement in the month of February, 1983. It is also submitted that the two courts below concurrently decided the question of fact against the plaintiff after considering the oral as well as documentary evidence and it is not a case of misreading of the documents by ignoring material evidence by the courts below. It is also submitted that even otherwise if this Court looks into the documents produced by the plaintiff, then also it will be clear from those documents which were relied upon by the plaintiff that the plaintiff failed to prove his relation with these documents. It is also submitted that the plaintiff could have produced the certificate of the school in the trial court but did not produce and the document which has been now produced is also not original and further the document produced in second appeal after inordinate delay is inadmissible in evidence. It is also submitted that the certificate sought to be produced by the plaintiff in this second appeal is purported to be of the

examination of the year 1943 and it is apparent that the certificate is dated 27.7.1989. It is also clear that even if any duplicate copy of the certificate is issued on a subsequent date to the date of actual issuance of the certificate, even then there may be endorsement of issuance of duplicate certificate containing the date of issuance of duplicate certificate but the original date of issuance cannot be changed.

I considered the submissions of the learned counsel for the parties and perused the record and the documents Ex.1,Ex.2 and Ex.3 as well as the documents produced by the plaintiff before this Court.

It appears from the reasons given by the courts below that the two courts below carefully considered the documents and examined the oral evidence to find out whether the plaintiff proved his any connection with these documents and thereafter they reached to the conclusion that with the help of these documents, they are not reliable. Even if facts mentioned in the documents are considered again, the connection of these documents with the plaintiff is not established. Not only this when the documents produced by the plaintiff himself summoned from the school of Abohar show that there are two persons having the same name Prabhu Dayal and two dates of birth are recorded in the register and the plaintiff failed to prove that entry made in the said register was made by the person who had personal knowledge about the date of birth of the plaintiff, then these documents cannot be

accepted as valid proof for proving the fact, a fact in issue.

Apart from it, this Court also looked into these documents and found that the courts below have not misread or misinterpreted the documents. The question was not much of interpretation or misinterpretation of documents, the question was about the reliability of the document. Both the courts rightly held that the documents are not reliable. I do not find any error in the judgments of the two courts below.

So far as application of the appellant filed under Order 41 Rule 27, C.P.C. is concerned, that was filed before this Court after filing of the appeal. The plaintiff-appellant even after loosing from two courts below, did not choose to file the original copy of the duplicate certificate which he alleges that he obtained from the Punjab University and the University granted matriculation examination certificate of the year 1943.The certificate bears the date of issuance as 27.7.1989 which is about 46 years after from the time of examination. The copy which has been placed on record clearly shows that this copy bears no endorsement of issuance of duplicate copy by a competent authority. The only printed letter is there “duplicate”. When in fact the certificate of 1943 was issued has not been mentioned in the certificate and when the duplicate copy was issued has also not been certified by the authority of the University. How this date 27.7.1989 came at the place

where the date is written for a certificate on which the certificate is issued. In view of the above, I do not find any sufficient reason as well as the documents not worth reliance, to be accepted at this belated stage.

In view of the above, I do not find any merit in the appeal and the same is hereby dismissed.

(**PRAKASH TATIA),J.**

mlt.